

CHAPTER 11 WAGE AND HOUR LAW

ARTICLE 2. MINIMUM WAGE STANDARDS

34:11-56a. Minimum wage level; establishment

It is declared to be the public policy of this State to establish a minimum wage level for workers in order to safeguard their health, efficiency, and general well-being and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to their health, efficiency and well-being.

34:11-56a1. Definitions

As used in this act:

- (a) "Commissioner" means the Commissioner of Labor.
- (b) "Director" means the director in charge of the bureau referred to in section 3 of this act.
- (c) "Wage board" means a board created as provided in section 10 of this act.
- (d) "Wages" means any moneys due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including any gratuities received by an employee for services rendered for an employer or a customer of an employer and the fair value of any food or lodgings supplied by an employer to an employee. The commissioner may, by regulation, establish the average value of gratuities received by an employee in any occupation and the fair value of food and lodging provided to employees in any occupation which average values shall be acceptable for the purposes of determining compliance with this act in the absence of evidence of the actual value of such items.
- (e) "Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing the total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.
- (f) "Employ" includes to suffer or to permit to work.
- (g) "Employer" includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
- (h) "Employee" includes any individual employed by an employer.
- (i) "Occupation" means any occupation, service, trade, business, industry or branch or group of industries or employment or class of employment in which employees are gainfully employed.
- (j) "Minimum fair wage order" means a wage order promulgated pursuant to this act.
- (k) "Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.
- (l) "Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.
- (m) "Limousine" means a motor vehicle used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity in no event of more than 14 passengers, not including the driver, provided, that such a motor vehicle shall not have a seating capacity in excess of four passengers, not including the driver, beyond the maximum passenger seating capacity of the vehicle, not including the driver, at the time of manufacture. "Limousine" shall not include taxicabs, hotel or airport shuttles and buses, buses employed solely in transporting school children or teachers to and from school, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services or vehicles owned and operated without charge or remuneration by a business entity for its own purposes.

34:11-56a2. Bureau for administration of act; director and assistants

The commissioner shall maintain a bureau in the department to which the administration of this act, and of any minimum wage orders or regulations promulgated hereunder, shall be assigned, said bureau to consist of a director in charge and such assistants and employees as the commissioner may deem desirable.

34:11-56a3. Employment at unreasonable wage declared contrary to public policy; contract or agreement void

The employment of an employee in any occupation in this State at an oppressive and unreasonable wage is hereby declared to be contrary to public policy and any contract, agreement or understanding for or in relation to such employment shall be void.

34:11-56a4. Minimum wage rate; exemptions

Every employer shall pay to each of his employees wages at a rate of not less than \$5.05 per hour as of April 1, 1992 and, after January 1, 1999 the minimum hourly wage rate set by section 6(a)(1) of the federal "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)), and, as of October 1, 2005, \$6.15 per hour, and as of October 1, 2006, \$7.15 per hour for 40 hours of working time in any week and 1½ times such employee's regular hourly wage for each hour of working time in excess of 40 hours in any week, except this overtime rate shall not include any individual employed in a bona fide executive, administrative, or professional capacity or, if an applicable wage order has been issued by the commissioner under section 17 (C.34:11-56a16) of this act, not less than the wages prescribed in said order. The wage rates fixed in this section shall not be applicable to part-time employees primarily engaged in the care and tending of children in the home of the employer, to persons under the age of 18 not possessing a special vocational school graduate permit issued pursuant to section 15 of P.L.1940, c. 153 (C.34:2-21.15), or to persons employed as salesmen of motor vehicles, or to persons employed as outside salesmen as such terms shall be defined and delimited in regulations adopted by the commissioner, or to persons employed in a volunteer capacity and receiving only incidental benefits at a county or other agricultural fair by a nonprofit or religious corporation or a nonprofit or religious association which conducts or participates in that fair.

The provisions of this section for the payment to an employee of not less than 1½ times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week shall not apply to employees engaged to labor on a farm or employed in a hotel or to an employee of a common carrier of passengers by motor bus or to a limousine driver who is an employee of an employer engaged in the business of operating limousines or to employees engaged in labor relative to the raising or care of livestock.

Employees engaged on a piece-rate or regular hourly rate basis to labor on a farm shall be paid for each day worked not less than the minimum hourly wage rate multiplied by the total number of hours worked.

Full-time students may be employed by the college or university at which they are enrolled at not less than 85% of the effective minimum wage rate.

Notwithstanding the provisions of this section to the contrary, every trucking industry employer shall pay to all drivers, helpers, loaders and mechanics for whom the Secretary of Transportation may prescribe maximum hours of work for the safe operation of vehicles, pursuant to section 31502(b) of the federal Motor Carrier Act, 49 U.S.C. s.31502(b), an overtime rate not less than 1½ times the minimum wage required pursuant to this section and N.J.A.C. 12:56-3.1. Employees engaged in the trucking industry shall be paid no less than the minimum wage rate as provided in this section and N.J.A.C. 12:56-3.1. As used in this section, "trucking industry employer" means any business or establishment primarily operating for the purpose of conveying property from one place to another by road or highway, including the storage and warehousing of goods and property. Such an employer shall also be subject to the jurisdiction of the Secretary of Transportation pursuant to the federal Motor Carrier Act, 49 U.S.C. s.31501 et seq., whose employees are exempt under section 213(b)(1) of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. s.213(b)(1), which provides an exemption to employees regulated by section 207 of the federal "Fair Labor Standards Act of 1938," 29 U.S.C. s. 207, and the Interstate Commerce Act, 49 U.S.C. s. 501 et al.

The provisions of this section shall not be construed as prohibiting any political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing any standard for vendors, contractors and subcontractors of the subdivision regarding wage rates or overtime compensation which is higher than the standards provided for in this section, and no provision of any other State or federal law establishing a minimum standard regarding wages or other terms and conditions of employment shall be construed as preventing a political subdivision of the State from adopting an ordinance, resolution, regulation or rule, or entering into any agreement, establishing a standard for vendors, contractors and subcontractors of the subdivision which is higher than the State or federal law or which otherwise provides greater protections or rights to employees of the vendors, contractors and subcontractors of the

subdivision, unless the State or federal law expressly prohibits the subdivision from adopting the ordinance, resolution, regulation or rule, or entering into the agreement.

34:11-56a4.1. Summer camps, conferences and retreats; exception

The provisions of the act to which this act is a supplement in respect to minimum wages and compensation for overtime work shall not be applicable during the months of June, July, August or September of the year to summer camps, conferences and retreats operated by any nonprofit or religious corporation or association.

34:11-56a4.2. Application of act to wages under wage orders

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

34:11-56a4.3. Date of application of act

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

34:11-56a4.4. Date of application of L.1976, c. 88

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

34:11-56a4.5. Application of L.1979, c. 32

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

34:11-56a4.6. Application of L.1980, c. 182

The provisions of this act shall be applicable to wages covered by wage orders issued pursuant to section 17 of P.L.1966, c. 113 (C. 34:11-56a16).

34:11-56a4.7 New Jersey Minimum Wage Advisory Commission

- a. There is created a commission to be known as the "New Jersey Minimum Wage Advisory Commission," which shall be a permanent, independent body in but not of the Department of Labor and Workforce Development. The commission shall consist of five members as follows: the Commissioner of Labor and Workforce Development, ex officio, who shall serve as chair of the commission, and four members appointed by the Governor as follows: two persons who shall be nominated by organizations who represent the interests of the business community in this State and two persons who shall be nominated by the New Jersey State AFL-CIO.
- b. Members shall be appointed not later than December 31, 2005. Members shall be appointed for four-year terms and may be re-appointed for any number of terms. Any member of the commission may be removed from office by the Governor, for cause, upon notice and opportunity to be heard. Vacancies shall be filled in the same manner as the original appointment for the balance of the unexpired term. A member shall continue to serve upon the expiration of his term until a successor is appointed and qualified, unless the member is removed by the Governor.
- c. Action may be taken by the commission by an affirmative vote of a majority of its members and a majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission.
- d. Members of the commission shall serve without compensation, but may be reimbursed for the actual and necessary expenses incurred in the performance of their duties as members of the commission within the limits of funds appropriated or otherwise made available for that purpose.

34:11-56a4.8. Annual evaluation of adequacy of minimum wage.

- a. The commission shall annually evaluate the adequacy of the minimum wage relative to the following factors:
 - (1) The overall cost of living in the State;

- (2) Changes in the components of the cost of living which have the greatest impact on low-income families, including increases in the cost of housing, food, transportation, health care and child care;
 - (3) The cost of living in the State compared to that of other states;
 - (4) Changes in the purchasing power of the minimum wage; and
 - (5) Changes in the value of the minimum wage relative to the federal poverty guidelines, the federal lower living standard income level guidelines and the self-sufficiency standards established as goals for State and federal employment and training services pursuant to section 3 of P.L.1992, c.43 (C.34:15D-3) and section 1 of P.L.1992, c.48 (C.34:15B-35).
- b. In furtherance of its evaluation, the commission may hold public meetings or hearings within the State on any matter or matters related to the provisions of this act, and call to its assistance and avail itself of the services of the John J. Heldrich Center for Workforce Development and the employees of any other State department, board, commission or agency which the commission determines possesses relevant data, analytical and professional expertise or other resources which may assist the commission in discharging its duties under this act. Each department, board, commission or agency of this State is hereby directed, to the extent not inconsistent with law, to cooperate fully with the commission and to furnish such information and assistance as is necessary to accomplish the purposes of this act.
- c. The commission shall submit a written report of its findings regarding the adequacy of the minimum wage and its recommendations as to whether, or how much, to increase the minimum wage to the Governor and to the Legislature, who shall immediately review the commission report upon its receipt. Each House of the Legislature shall consider the commission report within 120 days of the receipt of the report. The first report shall be submitted to the Legislature no sooner than October 1, 2007 and no later than December 31, 2007, and subsequent reports shall be submitted in one year intervals thereafter.

34:11-56a5. Administrative regulations; publication; duration

For any occupation for which no wage order issued pursuant to section 17 of this act is in effect, the commissioner shall, within 6 months after the rate provided in section 5 is in effect, make such administrative regulations as he shall deem appropriate to carry out the purposes of this act or necessary to prevent the circumvention or evasion thereof, and to safeguard the minimum wage rates hereby established. Such regulations may include regulations defining and governing outside salesmen; learners and apprentices, their number, proportion and length of service; part-time pay; bonuses, overtime pay; special pay for special or extra work; or permitted charges to employees or allowances for board, lodging, apparel or other facilities or services customarily furnished by employers to employees; or allowances for such other special conditions or circumstances.

The commissioner shall publish such regulations as he proposes to issue and such regulations may be issued pursuant to this section only after a public hearing, subsequent to publication of notice of the hearing, at which any person may be heard.

Such administrative regulations shall remain in effect only until such time as a wage order governing the occupation or occupations concerned, and to the extent inconsistent therewith, has been promulgated and becomes effective as provided in this act.

34:11-56a6. Authority of commissioner and director

The commissioner, the director and their authorized representatives shall have the authority to:

- (a) investigate and ascertain the wages of persons employed in any occupation in the State;
- (b) enter and inspect the place of business or employment of any employer or employees in any occupation in the State, for the purpose of examining and inspecting any or all books, registers, payrolls and other records of any such employer that in any way relate to or have a bearing upon the question of wages, hours, and other conditions of employment of any such employees; copy any or all of such books, registers, payrolls, and other records as he or his authorized representative may deem necessary or appropriate; and question such employees for the purpose of ascertaining whether the provisions of this act and the orders and regulations issued hereunder have been and are being complied with; and

- (c) require from such employer full and correct statements in writing, including sworn statements, with respect to wages, hours, names, addresses and such other information pertaining to his employees and their employment as the commissioner, the director or their authorized representatives may deem necessary or appropriate.

34:11-56a7. Investigation of occupation

The commissioner shall have the power, on his own motion, and it shall be his duty upon the petition of 50 or more residents of the State, to cause the director to investigate any occupation to ascertain whether a substantial number of employees are receiving less than a fair wage.

34:11-56a8. Appointment of wage board; report upon establishment of minimum fair wage rates

If the commissioner is of the opinion that a substantial number of employees in any occupation or occupations are receiving less than a fair wage, he shall appoint a wage board as provided in section 10 of this act to report upon the establishment of minimum fair wage rates for employees in such occupation or occupations.

34:11-56a9. Wage board; membership; quorum; rules and regulations; compensation

A wage board shall be composed of not more than 3 representatives of the employers in any occupation, an equal number of representatives of the employees in such occupations and not more than 3 disinterested persons representing the public, one of whom shall be designated by the commissioner as chairman. The commissioner after conferring with the director shall appoint the members of the wage board, the representatives of the employers and employees to be selected so far as practicable from nominations submitted by the employers and employees. Two-thirds of the members shall constitute a quorum and the recommendations or report of the wage board shall require a vote of not less than a majority of all its members. The commissioner after conferring with the director shall make and establish from time to time rules and regulations governing the selection of a wage board and its mode of procedure not inconsistent with this act. The members of a wage board shall serve without pay but may be reimbursed for all necessary expenses.

34:11-56a10. Powers of wage board

A wage board shall have power to administer oaths and to require by subpoena the attendance and testimony of witnesses, the production of all books, records, and other evidence relative to matters under investigation. Such subpoena shall be signed and issued by the chairman of the wage board and shall be served and have the same effect as if issued out of the Superior Court. A wage board shall have power to cause depositions of witnesses residing within or without the State to be taken in the manner prescribed for like dispositions in civil actions in the Superior Court.

34:11-56a11. Presentation of evidence and information to wage board; witnesses

The commissioner or the director shall present to a wage board promptly upon its organization all the evidence and information in the possession of the commissioner or director relating to the wages of employees in the occupations for which the wage board was appointed and all other information which the commissioner or the director deems relevant to the establishment of a minimum fair wage, and shall cause to be brought before the committee any witnesses whom the commissioner or the director deems material. A wage board may summon other witnesses or call upon the commissioner or the director to furnish additional information to aid it in its deliberations.

34:11-56a12. Rules of evidence and procedure

The commissioner and the wage board in establishing a minimum fair wage, shall not be bound by technical rules of evidence or procedure, but may consider all relevant circumstances affecting the value of the service or class of service rendered; may consider the wages paid in the State for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards; and may be guided by like considerations as would guide a court in a suit for the reasonable value of services rendered at the request of the employer without agreement as to amount of wages to be paid.

34:11-56a13. Recommendations of wage board

The report of the wage board shall recommend minimum fair wage rates, on an hourly, daily or weekly basis for the employees in the occupation or occupations for which the wage board was appointed. The wage board may recommend establishment or modification of the number of hours per week after which the overtime rate established in section 5 shall apply and may recommend the establishment or modification of said overtime rate. The board may also recommend permitted charges to the employees or allowances for board, lodging, apparel, or other facilities or services customarily furnished by the employer to the employee; or allowances for such other special conditions or circumstances excluding

gratuities which may be usual in a particular employer-employee relationship. A wage board may differentiate and classify employments in any occupation according to the nature of the service rendered and recommend appropriate minimum fair wage rates for different employments. It may recommend minimum fair wage rates varying with localities if in the judgment of the wage board conditions make such local differentiation proper.

A wage board may recommend a suitable scale of rates for learners and apprentices or students in any occupation which may be less than the regular minimum fair wage rates recommended for experienced employees.

34:11-56a14. Submission of report of wage board

Within 60 days of its organization a wage board shall submit to the commissioner a report including its recommendations as to minimum fair wage standards for the employees in the occupation or occupations the wage standards of which the wage board was appointed to investigate. If its report is not submitted within such time the commissioner may constitute a new wage board.

34:11-56a15. Acceptance or rejection of report by commissioner

On submission of the report of a wage board the commissioner shall within 10 days confer with the director and accept or reject the report.

If he rejects the report, he shall resubmit the matter to the same wage board or to a new wage board with a statement of his reasons for the rejection.

If he accepts the report, it shall be published within 30 days together with such proposed administrative regulations as the commissioner after conferring with the director may deem appropriate to supplement the report of the wage board and to safeguard the minimum fair wage standards to be established.

At the same time notice shall be given of a public hearing before the commissioner or the director, not sooner than 15 nor more than 30 days after such publication, at which all persons favoring or opposing the recommendations contained in the report or the proposed regulations may be heard.

34:11-56a16. Approval or disapproval of report following public hearing; effective date of wage order

Within 10 days after the hearing the commissioner shall confer with the director and approve or disapprove the report of the wage board. If the report is disapproved the commissioner may resubmit the matter to the same wage board or to a new wage board. If the report is approved, the commissioner shall make a wage order which shall define minimum fair wage rates in the occupation or occupations as recommended in the report of the wage board and which shall include such proposed administrative regulations as the commissioner may deem appropriate to supplement the report of the wage board and to safeguard the minimum fair wage standards established. Such administrative regulations may include among other things, regulations defining and governing learners and apprentices, their rates, number, proportion or length of service; piece rates or their relations to time rates; overtime or part-time rates, bonuses or special pay for special or extra work; deductions for board, lodging, apparel or other items or services supplied by the employer; and other special conditions or circumstances excluding gratuities; and in view of the diversities and complexities of different occupations and the dangers of evasion and nullification, the commissioner may provide in such regulations without departing from the basic minimum rates recommended by the wage board such modifications or reductions of or addition to such rates in or for such special cases or classes of cases as those herein enumerated as the commissioner may find appropriate to safeguard the basic minimum rates established. Said wage order shall take effect upon expiration of 180 days from the date of the issuance of the order.

34:11-56a17. Special certificates or licenses for employment at wages less than minimum

- (a) The commissioner, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulation provide for the employment of learners, apprentices and students, under special certificates issued pursuant to regulations of the commissioner, at such wages lower than the minimum wage applicable under the provisions of this act and subject to such limitations as to time, number, proportion and length of service as the commissioner shall prescribe.
- (b) For any occupation for which minimum fair wage order rates or minimum wage rates are established by or pursuant to this act the commissioner or the director may cause to be issued to an employee, including a learner, apprentice or student, whose earning capacity is impaired by age or physical or mental deficiency or injury, a special license authorizing employment at such wages less than such minimum wage rates and for such period of time as shall be fixed by the commissioner or the director and stated in the license.

34:11-56a18. Modification of wage order

At any time after a minimum fair wage order has been in effect for 1 year or more, the commissioner may, on his own motion, after conferring with the director, and shall, on petition of 50 or more residents of the State, reconsider the minimum fair wage rates set therein and reconvene the same wage board or appoint a new board to recommend whether or not the rate, or rates, contained in such order, shall be modified. The report of such wage board shall be dealt with in the manner prescribed in sections 15, 16 and 17 of this act.

34:11-56a19. Additions or modifications to administrative regulations; hearing; notice

The commissioner may, from time to time after conference with the director and without reference to a wage board, propose such modifications of or additions to any administrative regulations issued pursuant to sections 6 and 17 of this act as he may deem appropriate to effectuate the purposes of this article; provided, such proposed modifications or additions could legally have been included in the original regulation. Notice shall be given of a public hearing to be held by the commissioner or director not less than 15 days after such notice, at which all persons in favor of or opposed to the proposed modifications or additions may be heard. After the hearing the commissioner may make an order putting into effect the proposed modifications of or additions to the administrative regulations as he deems appropriate.

34:11-56a20. Record by employer of hours worked and wages; inspection; exceptions

Every employer of employees subject to this act shall keep a true and accurate record of the hours worked by each and the wages paid by him to each and shall furnish to the commissioner or the director or their authorized representative upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner or the director or their authorized representative at any reasonable time. No employer shall be found guilty of violating this provision for failure to keep a true and accurate record of the hours worked by outside salesmen, buyers of poultry, eggs, cream, milk or other perishable commodities in their natural or raw state, homeworkers legally employed in accordance with the laws of this State or any person employed in a bona fide executive, administrative or professional capacity, except that no exemption from record keeping pursuant to this section in regard to any person employed in a bona fide executive, administrative or professional capacity shall be construed to permit an employer to pay wages at a rate which violates the provisions of section 5 of P.L.1966, c. 113 (C. 34:11-56a4).

34:11-56a21. Summary of act, orders, and regulations; posting

Every employer subject to any provision of this act or of any regulations or orders issued under this act shall keep a summary of this act, approved by the commissioner, and copies of any applicable wage orders and regulations issued under this act, or a summary of such wage orders and regulations, posted in a conspicuous and accessible place in or about the premises wherein any person subject thereto is employed. Employers shall be furnished copies of such summaries, orders, and regulations by the State on request without charge.

34:11-56a22. Violations of act; misdemeanor

Any employer who willfully hinders or delays the commissioner, the director or their authorized representatives in the performance of his duties in the enforcement of this act, or fails to make, keep, and preserve any records as required under the provisions of this act, or falsifies any such record, or refuses to make any such record accessible to the commissioner, the director or their authorized representatives upon demand, or refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this act to the commissioner, the director or their authorized representatives upon demand, or pays or agrees to pay wages at a rate less than the rate applicable under this act or any wage order issued pursuant thereto, or otherwise violates any provision of this act or of any regulation or order issued under this act shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 90 days or by both the fine and imprisonment and, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment. Each week, in any day of which an employee is paid less than the rate applicable to him under this act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

As an alternative to or in addition to any other sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c. 113 (C.34:11-56a et seq.), when the Commissioner of Labor finds that an individual has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968,

c. 410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period.

Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-56a23. Supervision by commissioner of payments of amounts due employees

As an alternative to any other sanctions or in addition thereto, herein or otherwise provided by law for violation of this act or of any rule or regulation duly issued hereunder, the Commissioner of Labor is authorized to supervise the payment of amounts due to employees under this act, and the employer may be required to make these payments to the commissioner to be held in a special account in trust for the employee, and paid on order of the commissioner directly to the employee or employees affected. The employer shall also pay the commissioner an administrative fee equal to not less than 10% or more than 25% of any payment made to the commissioner pursuant to this section. The amount of the administrative fee shall be specified in a schedule of fees to be promulgated by rule or regulation of the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). The fee shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-56a24. Discharge or discrimination against employee making complaint; misdemeanor

Any employer who discharges or in any other manner discriminates against any employee because such employee has made any complaint to his employer, to the commissioner, the director or to their authorized representatives that he has not been paid wages in accordance with the provisions of this act, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this act, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100 nor more than \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.

As an alternative to or in addition to any other sanctions provided by law for violations of P.L.1966, c. 113 (C. 34:11-56a et seq.), when the Commissioner of Labor finds that an employer has violated that act, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of \$250 for a first violation and up to a maximum of \$500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the Commissioner of Labor provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Division of Workplace Standards in the Department of Labor.

34:11-56a25. Civil action by employee to recover amount of minimum wage less amount paid

If any employee is paid by an employer less than the minimum fair wage to which such employee is entitled under the provisions of this act or by virtue of a minimum fair wage order such employee may recover in a civil action the full amount

of such minimum wage less any amount actually paid to him or her by the employer together with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between such employee and the employer to work for less than such minimum fair wage shall be no defense to the action. An employee shall be entitled to maintain such action for and on behalf of himself or other employees similarly situated, and such employee and employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated. At the request of any employee paid less than the minimum wage to which such employee was entitled under the provisions of this act or under an order, the commissioner may take an assignment of the wage claim in trust for the assigning employee and may bring any legal action necessary to collect the claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court.

34:11-56a25.1. Limitations; commencement of action

No claim for unpaid minimum wages, unpaid overtime compensation, or other damages under this act shall be valid with respect to any such claim which has arisen more than 2 years prior to the commencement of an action for the recovery thereof. In determining when an action is commenced, the action shall be considered to be commenced on the date when a complaint is filed with the Commissioner of the Department of Labor and Industry or the Director of the Wage and Hour Bureau, and notice of such complaint is served upon the employer; or, where an audit by the Department of Labor and Industry discloses a probable cause of action for unpaid minimum wages, unpaid overtime compensation, or other damages, and notice of such probable cause of action is served upon the employer by the Director of the Wage and Hour Bureau; or where a cause of action is commenced in a court of appropriate jurisdiction.

34:11-56a25.2. Defense to action

In any action or proceeding commenced prior to or on or after the date of the enactment of this act based on any act or omission prior to or on or after the date of the enactment of this act, no employer shall be subject to any liability or punishment for or on account of the failure of the employer to pay minimum wages or overtime compensation under this act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval or interpretation by the Commissioner of the Department of Labor and Industry or the Director of the Wage and Hour Bureau, or any administrative practice or enforcement policy of such department or bureau with respect to the class of employers to which he belonged. Such a defense, if established, shall be a complete bar to the action or proceeding, notwithstanding, that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect.

34:11-56a26. Protection of right to collective bargaining

Nothing in this act shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minima under this act.

34:11-56a27. Partial invalidity

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act and the application thereof, to other persons or circumstances shall not be affected thereby.

34:11-56a28. Supplementation of provisions of Minimum Wage Standards Act

This act shall supplement the provisions of article 2 of chapter 11 of Title 34 of the Revised Statutes. Nothing herein shall be deemed to supersede any of the provisions of said article 2 of chapter 11, of Title 34, except insofar as the wages entitled to be received by any employee under the provisions of this act and the regulations and wage orders issued thereunder exceed the wages such employee is entitled to receive under the provisions of said article 2, of chapter 11, of Title 34 of the Revised Statutes and the regulations and wage orders issued pursuant thereto.

34:11-56a29. Short title

This act shall be known as the "New Jersey State Wage and Hour Law."

34:11-56a30. Application of act to minors

Except with respect to the minimum wage rates established by P.L.1966, c. 113, s. 5, the provisions of the "New Jersey State Wage and Hour Law," P.L.1966, c. 113 (C. 34:11-56a1 et seq.) are applicable to the employment of minors. Wage

orders pertaining to minors including those promulgated under R.S. 34:11-34 through R.S. 34:11-56, on the effective date of this act shall remain in force until superseded by wage orders or regulations issued pursuant to P.L.1966, c. 113.

34:11-56a31. Establishment of maximum work week for certain health care facility employees

It is declared to be the public policy of this State to establish a maximum work week for certain hourly wage health care facility employees, beyond which the employees cannot be required to perform overtime work, in order to safeguard their health, efficiency, and general well-being as well as the health and general well-being of the persons to whom these employees provide services.

34:11-56a32. Definitions relative to work hours for certain health care facility employees

As used in this act:

"Employee" means an individual employed by a health care facility who is involved in direct patient care activities or clinical services and who receives an hourly wage, but shall not include a physician.

"Employer" means an individual, partnership, association, corporation or person or group of persons acting directly or indirectly in the interest of a health care facility.

"Health care facility" means a health care facility licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a State or county psychiatric hospital, a State developmental center, or a health care service firm registered by the Division of Consumer Affairs in the Department of Law and Public Safety pursuant to P.L.1960, c.39 (C.56:8-1 et seq.).

"On-call time" means time spent by an employee who is not currently working on the premises of the place of employment, but who is compensated for availability, or as a condition of employment has agreed to be available, to return to the premises of the place of employment on short notice if the need arises.

"Reasonable efforts" means that the employer shall: a. seek persons who volunteer to work extra time from all available qualified staff who are working at the time of the unforeseeable emergent circumstance; b. contact all qualified employees who have made themselves available to work extra time; c. seek the use of per diem staff; and d. seek personnel from a contracted temporary agency when such staff is permitted by law or regulation.

"Unforeseeable emergent circumstance" means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

34:11-56a33. Excessive work shift contrary to public policy

The requirement that an employee of a health care facility accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, except in the case of an unforeseeable emergent circumstance when the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing and the employer has exhausted reasonable efforts to obtain staffing, is declared to be contrary to public policy and any such requirement contained in any contract, agreement or understanding executed or renewed after the effective date of this act shall be void.

34:11-56a34. Health care facility employee work shift determined; exceptions voluntary

- (a) Notwithstanding any provision of law to the contrary, no health care facility shall require an employee to accept work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week.
- (b) The acceptance by any employee of such work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week, shall be strictly voluntary and the refusal of any employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.
- (c) The provisions of this section shall not apply in the case of an unforeseeable emergent circumstance when: (1) the overtime is required only as a last resort and is not used to fill vacancies resulting from chronic short staffing, and (2) the employer has exhausted reasonable efforts to obtain staffing. In the event of such an unforeseeable emergent circumstance, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee's minor children or elderly or disabled family members.

The requirement that the employer shall exhaust reasonable efforts to obtain staffing shall not apply in the event of any declared national, State or municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services.

- (d) In the event that an employer requires an employee to work overtime pursuant to subsection c. of this section, the employer shall document in writing the reasonable efforts it has exhausted. The documentation shall be made available for review by the Department of Health and Senior Services and the Department of Labor.

34:11-56a35. Violations, sanctions

An employer who violates the provisions of this act shall be subject to the sanctions provided by law for violations of the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.).

34:11-56a36. Construction, applicability of act

- (a) The provisions of this act shall not be construed to impair or negate any employer-employee collective bargaining agreement or any other employer-employee contract in effect on the effective date of this act.
- (b) The provisions of this act shall not apply to employees of assisted living facilities licensed by the Department of Health and Senior Services who are provided with room and board as a benefit of their employment and reside in the facility on a full-time basis.
- (c) The provisions of this act shall not apply to on-call time, but nothing in this act shall be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

34:11-56a37. Collection of data relative to mandatory overtime prohibition, report

The Departments of Health and Senior Services, Human Services, and Law and Public Safety shall each collect data from all health care facilities which the respective department licenses, operates or regulates, as to the potential impact of the mandatory overtime prohibition on employee availability and other considerations, and shall jointly report their findings to the Senate and General Assembly Health Committees within 18 months of the date of enactment of this act.

34:11-56a38. Rules, regulations

The Commissioner of Health and Senior Services, in consultation with the Attorney General and the Commissioners of Human Services and Labor, shall adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), within six months of the date of enactment of this act, to carry out the purposes of this act.

CHAPTER 56 WAGE AND HOUR REGULATIONS

SUBCHAPTER 1. GENERAL PROVISIONS

12:56-1.1 Purpose; scope

(a) The purpose of this subchapter is to establish rules to effectuate N.J.S.A. 34:11-56a et seq., the New Jersey State Wage and Hour Law (Act), to provide sanctions for noncompliance, and to protect established wage rates.

(b) The chapter is applicable to:

1. Wages and hours subject to the Act; and
2. Wages paid to an employee for services rendered.

(a) This chapter shall not apply to:

1. Volunteers; or
2. Patients.

12:56-1.2 Violations

(a) A violation of the Act shall occur when an employer:

1. Willfully hinders or delays the Commissioner in the performance of the duties of the Commissioner in the enforcement of this chapter;
2. Fails to make, keep and preserve any records as required under the provisions of this chapter;
3. Falsifies any such record;
4. Refuses to make any such record accessible to the Commissioner upon demand;
5. Refuses to furnish a sworn statement of such record or any other information required for the proper enforcement of this chapter to the Commissioner upon demand;
6. Pays or agrees to pay wages at a rate less than the rate applicable under this chapter or any wage order issued pursuant thereto;
7. Requests, demands, or receives, either for himself, herself or any other person, either before or after a worker is engaged in public or private work at a specified rate of wages, the following:
 - i. That such worker forego, pay back, return, donate, contribute or give any part, or all, of his or her wages, salary or thing of value, to any person upon the statement, representation or understanding that failure to comply with such request or demand will prevent such worker from procuring or retaining employment; or
8. Otherwise violates any provision of this chapter or of any order issued under this chapter.

(b) An employer who knowingly and willfully violates any provision of N.J.S.A. 34:11-56a et seq. shall be guilty of a disorderly persons offense and shall, upon conviction for a first violation, be punished by a fine of not less than \$100.00 nor more than \$1,000, or by imprisonment for not less than 10 nor more than 90 days, or by both the fine and imprisonment.

(c) The employer shall, upon conviction for a second or subsequent violation, be punished by a fine of not less than \$500.00 nor more than \$1,000 or by imprisonment for not less than 10 nor more than 100 days or by both the fine and imprisonment.

(d) Each week in any day of which an employee is paid less than the rate applicable to him or her under the Act or under a minimum fair wage order, and each employee so paid, shall constitute a separate offense.

(e) The wage rate applicable to the employee shall conform to the overtime provisions of N.J.A.C. 12:56-6.

12:56-1.3 Administrative penalties

(a) As an alternative to or in addition to any other sanctions provided for in N.J.A.C. 12:56-1.2 under N.J.S.A. 34:11-56 et seq. when the Commissioner of Labor and Workforce Development finds that an employer has violated that Act, the Commissioner is authorized to assess and collect an administrative penalty in the amounts that follow:

1. First violation-not more than \$250.00;
2. Second and subsequent violation-not less than \$25.00 nor more than \$500.00.

- (b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following the receipt of the notice.
1. If a hearing is not requested, the notice shall become the Final Order upon the expiration of the 15 business day period following receipt of the notice.
 2. If a hearing is requested, the Commissioner shall issue a Final Order upon such hearing and a finding that a violation has occurred.
 3. All wages due, fees and penalties shall be paid within 30 days of the date of Final Order. Failure to pay such wages due, fees and/or penalty shall result in a judgment being obtained in a court of competent jurisdiction.
 4. All payments shall be made payable to the Commissioner of Labor and Workforce Development, Wage and Hour Trust Fund in the form of a certified check or money order, or such other form suitable to the Commissioner of Labor and Workforce Development.
- (c) In assessing an administrative penalty pursuant to this chapter, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violations:
1. The seriousness of the violation;
 2. The past history of previous violations by the employer;
 3. The good faith of the employer;
 4. The size of the employer's business; and
 5. Any other factors which the Commissioner deems to be appropriate in the determining of the penalty assessed.

12:56-1.4 Administrative fees

- (a) The Commissioner is authorized to supervise the payment of amounts due to employees under this chapter, and the employer may be required to make these payments to the Commissioner to be held in a special account in trust for the employee, and paid on order of the Commissioner to the employee or employees affected.
- (b) The employer shall also pay the Commissioner an administrative fee on all payments of gross amounts due to employees pursuant to Articles 1 and 2 of Chapter II of Title 34 of the revised statutes.
- (c) A schedule of the administrative fees is set forth in Table 1.4(c) below.

Table 1.4(c)

Schedule of Administrative Fees

1. First Violation-10 percent of amount of any payment made to the Commissioner pursuant to this chapter.
2. Second Violation-18 percent of amount of any payment made to the Commissioner pursuant to this chapter.
3. Third and Subsequent Violations-25 percent of amount of any payment made to the Commissioner pursuant to this chapter.

12:56-1.5 Interest

- (a) When the Commissioner makes an award of back pay, he or she may also award interest in the following situations:
1. When an employer has unreasonably delayed compliance with an order of the Commissioner to pay wages owed to an employee;
 2. Where an equitable remedy is required in order to recover the loss of the present value of money retained by the employer over an extensive period of time; or
 3. Where the Commissioner finds sufficient cause based on the particular case.
- (b) Where applicable, interest deemed owed to an employee shall be calculated at the annual rate as set forth in New Jersey Court Rules, 4:42-11.

12:56-1.6 Hearings

- (a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:56-1.3, the employer shall have the right to a hearing under (b) below.

- (b) No administrative penalty shall be levied pursuant to this subchapter unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for formal hearing must be received within 15 business days following the receipt of the notice. All hearings shall be heard pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.
- (c) All requests for hearing will be reviewed by the Division of Wage and Hour Compliance to determine if the reason for dispute could be resolvable at an informal settlement conference. If the review indicates that an informal settlement conference is warranted, such conference will be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative Law for a formal hearing.
- (d) The Commissioner shall make the final decision of the Department.
- (e) Appeals of the final decision of the Commissioner shall be made to the Appellate Division of the New Jersey Superior Court.
- (f) If the employer, or a designated representative of the employer, fails to appear at a requested hearing, the Commissioner or his or her designee may, for good cause shown, re-schedule a hearing.
- (g) If the Commissioner or his or her designee does not authorize such a re-scheduled hearing, then the Commissioner shall issue a final agency determination effective upon the date set for the original hearing.
- (h) Payment of the penalty is due when a final agency determination is issued.
- (i) Upon final order the penalty imposed may be recovered with cost in a summary proceeding commenced by the Commissioner pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq.

12:56-1.7 Discharge or discrimination against employee making complaint

- (a) An employer is a disorderly person, if he or she discharges or in any other manner discriminates against any employee because such employee has made any complaint to his or her employer or to the Commissioner that he or she has not been paid wages in accordance with the provisions of this chapter, or because such employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to this chapter, or because such employee has testified or is about to testify in any such proceeding, or because such employee has served or is about to serve on a wage board, and shall be guilty of a disorderly persons offense and shall, upon conviction therefor, be fined not less than \$100.00 nor more than \$1,000. Such employer shall be required, as a condition of such judgment of conviction, to offer reinstatement in employment to any such discharged employee and to correct any such discriminatory action, and also to pay to any such employee in full, all wages lost as a result of such discharge or discriminatory action, under penalty of contempt proceedings for failure to comply with such requirement.
- (b) As an alternative to, or in addition to, any sanctions imposed under (a) above, the Commissioner is authorized under N.J.S.A. 34:11-56a24 to assess and collect administrative penalties as provided for in N.J.A.C. 12:56-1.3.

SUBCHAPTER 2. DEFINITIONS

12:56-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means the New Jersey State Wage and Hour Law, N.J.S.A. 34:11-56a et seq.

“Commissioner” means the Commissioner of the Department of Labor and Workforce Development or his or her designee.

“Covered employee” means an employee subject to this chapter.

“Division of Wage and Hour Compliance” means Division of Wage and Hour Compliance of Labor Standards and Safety Enforcement of the New Jersey State Department of Labor and Workforce Development, PO Box 389, Trenton, N.J. 08625-0389.

"Employ" means to suffer or permit to work.

"Employee" includes any individual employed by an employer, except:

1. For trainees who are involved in a program in which:

- i. The training is for the primary benefit of the trainee;
- ii. The employment for which the trainee is training requires some cognizable trainable skill;
- iii. The training is not specific to the employer, that is, is not exclusive to its needs, but may be applicable elsewhere for another employer or in another field of endeavor;
- iv. The training, even though it includes actual operation of the facilities of the employer, is similar to that which may be given in a vocational school;
- v. The trainee does not displace a regular employee on a regular job or supplement a regular job, but trains under close tutorial observation;
- vi. The employer derives no immediate benefit from the efforts of the trainee and, indeed, on occasion may find his or her regular operation impeded by the trainee;
- vii. The trainee is not necessarily entitled to a job at the completion of training;
- viii. The training program is sponsored by the employer, is outside regular work hours, the employee does no productive work while attending and the program is not directly related to the employee's present job (as distinguished from learning another job or additional skill); and
- ix. The employer and the trainee share a basic understanding that regular employment wages are not due for the time spent in training, provided that the trainee does not perform any productive work.

2. If a trainee does not meet all of the above-listed criteria, the trainee shall be considered to be an employee.

"Employer" includes any individual, partnership, association, corporation or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

"Fair wage" means a wage fairly and reasonably commensurate with the value of the service or class of service rendered and sufficient to meet the minimum cost of living necessary for health.

"N.J.A.C." means the New Jersey Administrative Code.

"N.J.S.A." means the New Jersey Statutes Annotated.

"Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

"Oppressive and unreasonable wage" means a wage which is both less than the fair and reasonable value of the service rendered and less than sufficient to meet the minimum cost of living necessary for health.

"Patient" means a person, such as an alcoholic or drug addict receiving inconsequential payments in a program administered by an organized and generally recognized charity.

"Premium pay" means a sum of money or bonus paid in addition to the regular price, salary or other amount.

"Regular hourly wage" means the amount that an employee is regularly paid for each hour of work as determined by dividing total hours of work during the week into the employee's total earnings for the week, exclusive of overtime premium pay.

"Volunteer" means a person who donates his or her service for the protection of the health and safety of the general public. Such a person would include, among others, a volunteer fireman, rescue worker, an aide in the care of the sick,

aged, young, mentally ill, destitute and the like or assistant in religious, eleemosynary, educational, hospital, cultural and similar activities.

“Wages” means any monies due an employee from an employer for services rendered or made available by the employee to the employer as a result of their employment relationship including commissions, bonus and piecework compensation and including any gratuities received by an employer to an employee.

“Work hours” means the actual hours suffered or permitted to work.

SUBCHAPTER 3. MINIMUM WAGE RATES

12:56-3.1 Statutory minimum wage rates for specific years

(a) Except as provided in N.J.A.C. 12:56-3.2, employees shall be paid the minimum hourly wage rate set by section 6(a)(1) of the Federal “Fair Labor Standards Act of 1938” (29 U.S.C. 206(a)(1)).

12:56-3.2 Exemptions from the statutory minimum wage rates

(a) Employees in the following occupations shall be exempt from the statutory minimum wage rates:

1. Full-time students employed by the college or university at which they are enrolled at not less than 85 percent of the effective minimum wage rate, effective March 1, 1979;
2. Outside sales person;
3. Sales person of motor vehicles;
4. Part time employees primarily engaged in the care and tending of children in the home of the employer;
5. Minors under 18 years of age except as provided in N.J.A.C. 12:56-11, 12:56-13, 12:56-14 and N.J.A.C. 12:57, Wage Orders for Minors; and
6. At summer camps, conferences and retreats operated by any nonprofit or religious corporation or association during the months of June, July, August and September.

SUBCHAPTER 4. RECORDS

12:56-4.1 Contents

Every employer shall keep records which contain the name and address of each employee, the birth date if under the age of 18, the total hours worked each day and each workweek, earnings, including the regular hourly wage, gross to net amounts with itemized deductions, and the basis on which wages are paid.

12:56-4.2 Time keeping system

The employer may use any system of time keeping containing the items specified in N.J.A.C. 12:56-4.1, provided it is a complete, true and accurate record.

12:56-4.3 Fixed working schedule

- (a) Many employees, particularly in offices, are on a fixed working schedule from which they seldom vary. In these instances, the employer may keep a record showing the exact schedule of daily and weekly work hours that the employee is expected to follow and merely indicate each workweek that the schedule was followed.
- (b) When the employee works longer or shorter hours than the schedule indicates, the employer shall record the hours the employee actually worked.

12:56-4.4 Retention period

Records containing the information required by this subchapter shall be kept for six years.

12:56-4.5 Location; inspection

- (a) Records shall be kept at the place of employment or in a central office in New Jersey, except as provided in (b) below.
- (b) In unusual circumstances where it is not feasible to keep records in New Jersey, exception from this provision may be obtained from the Commissioner.

(c) All records shall be open to inspection by the Commissioner at any reasonable time.

12:56-4.6 Employer gratuity records

Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employee, every employer of employees who receive gratuities shall also maintain and preserve payroll or other records containing the total gratuities received by each employee during the payroll week.

12:56-4.7 Employee gratuity reports

(a) Employees receiving gratuities shall report them either daily or weekly as required by the employer. The information in the report shall include:

1. The employee's name, address and social security number;
2. The name and address of the employer;
3. The calendar day or week covered by the report; and
4. The total amount of gratuities received.

12:56-4.8 Acceptable gratuity report form

The United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips" shall be acceptable in those instances where the report is made on a weekly basis or less.

12:56-4.9 Food or lodging records

(a) Supplementary to the provisions of any section of this chapter pertaining to the records to be kept with respect to employees, every employer, who claims credit for food or lodging as a cash substitute for employees who receive food or lodgings supplied by the employer, shall maintain and preserve records substantiating the cost of furnishing such food or lodgings.

(b) Such records shall include the nature and amount of any expenditures entering into the computation of the fair value of the food or lodging and shall contain the date required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the lodgings, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. No particular degree of itemization is prescribed. The amount of detail shall be sufficient to enable the Commissioner, assistant director or his or her authorized representative to verify the nature of the expenditure and amount by reference to the basic records which shall be preserved pursuant to this chapter.

12:56-4.10 Additions to wages

If additions to wages paid so affect the total cash wages due in any workweek as to result in the employee receiving less in cash than the minimum hourly wage provided in the act or in any applicable wage order or if the employee works in excess of 40 hours a week the employer shall maintain records showing those additions to wages by reason of gratuities or food, or lodgings paid on a workweek basis.

SUBCHAPTER 5. HOURS WORKED

12:56-5.1 Payment

Employees entitled to the benefits of the act shall be paid for all hours worked.

12:56-5.2 Computation

- (a) All the time the employee is required to be at his or her place of work or on duty shall be counted as hours worked.
- (b) Nothing in this chapter requires an employer to pay an employee for hours the employee is not required to be at his or her place of work because of holidays, vacation, lunch hours, illness and similar reasons.

12:56-5.3 Accounting for irregular hours of resident employees

Employees who reside on the employer's premises and whose hours worked are irregular and intermittent to the extent that it is not feasible to account for the hours actually on duty may be compensated for not less than eight hours for each day on duty in lieu of any other applicable provisions.

12:56-5.4 Workweek construed

- (a) A workweek shall be a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods.
- (b) The workweek need not be the same as the calendar week and may begin any day of the week and any hour of the day.
- (c) The workweek shall be designated to the employee in advance.
- (d) Once the beginning time of an employee's workweek is established, it remains fixed regardless of the schedule of the hours worked.
- (e) The beginning of the workweek may be changed if the change is intended to be permanent and is not intended to evade the overtime requirements of the act.

12:56-5.5 Reporting for work

- (a) An employee who by request of the employer reports for duty on any day shall be paid for at least one hour at the applicable wage rate, except as provided in (b) below.
- (b) The provisions of (a) above shall not apply to an employer when he or she has made available to the employee the minimum number of hours of work agreed upon by the employer and the employee prior to the commencement of work on the day involved.

12:56-5.6 On-call time

- (a) When employees are not required to remain on the employer's premises and are free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, the hours shall not be considered hours worked. When an employee does go out on an on-call assignment, only the time actually spent in making the call shall be counted as hours worked.
- (b) If calls are so frequent or the "on-call" conditions so restrictive that the employees are not really free to use the intervening periods effectively for their own benefit, they may be considered as "engaged to wait" rather than "waiting to be engaged". In that event, the waiting time shall be counted as hours worked.

12:56-5.7 On-call employees required to remain at home

"On-call" employees may be required by their employer to remain at their homes to receive telephone calls from customers when the company office is closed. If "on-call" employees have long periods of uninterrupted leisure during which they can engage in the normal activities of living, any reasonable agreement of the parties for determining the number of hours worked shall be accepted. The agreement shall take into account not only the actual time spent in answering the calls but also some allowance for the restriction on the employee's freedom to engage in personal activities resulting from the duty of answering the telephone.

SUBCHAPTER 6. OVERTIME

12:56-6.1 Rate of overtime payment

For each hour of working time in excess of 40 hours in any week, except as provided in N.J.A.C. 12:56-7.6, every employer shall pay to each of his or her employees, wages at a rate of not less than 1½ times such employee's regular hourly wage.

12:56-6.2 Computation

- (a) Overtime and minimum wage pay shall be computed on the basis of each workweek standing alone.
- (b) Hours shall not be averaged over two or more workweeks.

12:56-6.3 Actual wage basis

Covered employees shall be entitled to overtime pay based upon their actual wages and not the specified minimum wages.

12:56-6.4 Workweek hours

- (a) Covered employees shall be paid 1½ times the regular hourly wage for each hour of working time in excess of 40 hours in any workweek.
- (b) There is no requirement that an employee be paid premium overtime compensation for hours in excess of eight hours per day, nor for work on Saturdays, Sundays, holidays or regular days of rest, other than the required overtime for over 40 hours per week; provided, however, nothing shall relieve an employer of any obligation he or she may have assumed by contract or of any obligation imposed by other State or Federal law limiting overtime hours of work or to pay premium rates for work which are in excess of the minimum required by this chapter.

12:56-6.5 “Regular hourly wage” payment basis

- (a) The “regular hourly wage” is a rate per hour.
- (b) The act does not require employers to compensate employees on an hourly rate basis. Their earnings may be determined on a piece-rate, salary, bonus, commission or other basis, but the overtime compensation due to employees shall be paid on the basis of the hourly rate derived therefrom. Therefore, the regular hourly wage of an employee is determined by dividing his or her total remuneration for employment, exclusive of overtime premium pay, in any workweek, by the total number of hours worked in that workweek for which such compensation was paid.
- (c) If an employee is remunerated solely on the basis of a single hourly rate, the hourly rate shall be his or her “regular hourly wage”.

12:56-6.6 Items excluded from “regular hourly wage”

- (a) The “regular hourly wage” shall not be deemed to include:
 - 1. Payments in the nature of gifts made on holidays or on other special occasions or as a reward for service, the amounts of which are not measured by or dependent on hours worked, production or efficiency;
 - 2. Payments made for occasional periods when no work is performed due to vacation, holiday or other similar cause;
 - 3. Reasonable payments for traveling or other expenses incurred by an employee in the furtherance of his or her employer's interests and properly reimbursable by the employer which are not made as compensation for employment;
 - 4. Sums paid in recognition of services performed during a given period if either:
 - i. Both the fact that payment is to be made and the amount of payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement or promise causing the employee to expect such payments regularly; or
 - ii. The payments are made pursuant to a bona fide profit-sharing plan or trust, or thrift or savings plan to the extent to which the amounts paid to the employee are determined without regard to hours of work, production or efficiency; or
 - 5. Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan providing for old age, retirement, life, accident, or health insurance or similar benefits for employees; or
 - 6. Additional premium compensation for hours worked in excess of eight hours per day, or for work on Saturdays, Sundays, holidays, or regular days of rest; or
 - 7. Overtime premiums.

12:56-6.7 Offsets; cash payments

- (a) Overtime premium payments shall not be offset by allowances for the value of food, lodging or gratuities since such allowances are already considered in determining the straight time wages paid. Overtime premium payments shall be cash payments by the employer.
- (b) Where the employee's pay includes the value of gratuities, food or lodging and it is not feasible to determine the exact regular hourly wage during a particular week, the employer shall be deemed to have fulfilled the overtime

requirements of this chapter if the premium payment for the overtime hours is paid in cash on the basis of the agreed hourly wage, but in no event shall the premium payment be at a rate less than the applicable minimum rate.

SUBCHAPTER 7. EXEMPTIONS FROM OVERTIME

12:56-7.1 Definition of executive

(a) "Executive" means any employee:

1. Whose primary duty consists of the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
2. Who customarily and regularly directs the work of two or more other employees therein; and
3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring and firing and as to the advancement and promotion of any other change of status of other employees will be given particular weight; and
4. Who customarily and regularly exercises discretionary powers; and
5. Who devotes less than 20 percent of his or her workweek to non-exempt work or less than 40 percent if employed by a retail or service establishment, provided that in either case he or she retains his or her role as manager and supervises two or more full time employees; and
6. Who is compensated for his or her services on a salary basis exclusive of gratuities, board, lodging or other facilities, at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991, and \$400.00 per week effective April 1, 1992.

(b) "Executive" shall also include employees owning a bona fide equity in the enterprise of 20 percent or more.

(c) "Executive" shall not include employees training to become executives and not actually performing the duties of an executive.

12:56-7.2 Definition of administrative

(a) "Administrative" means any employee:

1. Whose primary duty consists of the performance of office or non-manual work directly related to management policies or general internal business operations; and
2. Who customarily and regularly exercises discretion and independent judgment; and
3. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity; or who performs under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; or who executes under only general supervision special assignments and tasks; and
4. Who devotes less than 20 percent of his or her work to nonexempt work or less than 40 percent if employed by a retail or service establishment; and
5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

(b) "Administrative" shall also include an employee whose primary duty consists of sales activity and who receives at least 50 percent of his or her total compensation from commissions and a total compensation of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

12:56-7.3 Definition of professional

(a) "Professional" means any employee:

1. Whose primary duty consists of the performance of work:
 - i. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes; or
 - ii. Which is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; or

- iii. Which requires theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering, and who is employed and engaged in these activities as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker in the computer software field, as provided in 29 C.F.R. 541.303; and
- 2. Whose work requires the consistent exercise of discretion and judgment in its performance; and
- 3. Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized to a given period of time; and
- 4. Who devotes less than 20 percent of his or her workweek to nonexempt work; and
- 5. Who is compensated for his or her services on a salary or fee basis, exclusive of gratuities, board, lodging or other facilities at a rate of not less than \$300.00 per week effective November 5, 1990, \$350.00 per week effective April 1, 1991 and \$400.00 per week effective April 1, 1992.

12:56-7.4 Definition of outside sales person

(a) "Outside sales person" means any employee:

- 1. Who is employed for the purpose of and who is customarily and regularly engaged away from his or her employer's place or places of business in:
 - i. Making sales; or
 - ii. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- 2. Whose hours of work of a nature other than that described in (a)1 above do not exceed 20 percent of hours worked in the workweek; provided, that work performed incidental to and in conjunction with the outside sales person's own personal sales or solicitations, including incidental deliveries and collection, shall be regarded as exempt work. Employees who basically drive vehicles and who only incidentally or occasionally make sales shall not qualify for this exemption.

12:56-7.5 Outside service employees

Employees who are dispatched to perform a service and solicit performance of an additional service shall not qualify for this exemption.

12:56-7.6 Employees exempt from overtime

- (a) Employees in a bonafide executive, administrative or professional capacity and outside sales persons shall be exempt from the overtime requirements of N.J.A.C. 12:56-6.1, with the exception of (b) below.
- (b) Those employees who qualify as professionals under N.J.A.C. 12:56-7.3(a)1iii, who are also compensated on an hourly basis, must be compensated at a rate of not less than \$27.63 an hour in order to be exempt from the overtime requirements of N.J.A.C. 12:56-6.1.

SUBCHAPTER 8. GRATUITIES, FOOD AND LODGING

12:56-8.1 Definitions

- (a) "Fair value" means not more than the actual cost to the employer of the food or lodging supplied by an employer and does not include a profit to the employer nor to any affiliated business or person.
- (b) "Gratuity" means cash received by an employee for services rendered for an employer or customer of an employer.

12:56-8.2 Gratuity splitting

Where employees practice gratuity splitting (for example, where food servers pay a portion of the gratuities received by them to food clearers), each employee shall have included in wages only the applicable proportionate share.

12:56-8.3 Determining cash gratuities

(a) In determining the cash gratuities actually received by an employee, the following methods shall be evidentiary value:

- 1. Statements, including United States Treasury Department, Internal Revenue Service, "Employee's Report on Tips", that are furnished by an employee to an employer;

2. Amounts indicated on customer billing, credit card invoices or other customer charge accounts wherein there is an indicated service charge or gratuity designated for the employee and payable to the employee.

12:56-8.4 Administrative handling of gratuities

- (a) Provided there is an agreement in advance with the employees, the employer, in order to facilitate the administrative handling of gratuity allowances, may establish an average value of gratuities received by an employee based upon a percentage of gross sales apportioned on basis of hours worked among the employees being tipped. This portion shall be:
 1. Derived from a representative sampling of the sources indicated in N.J.A.C. 12:56-8.3; or
 2. Ten percent; or
 3. Such other method as may be agreed upon subject to the approval of the Commissioner.
- (b) Gratuities shall be the property of the tipped employee. Gratuities shall be restored to the tipped employee except when gratuities are pooled, voluntarily by the employees or as a policy of management.

12:56-8.5 Additional cash contribution claim

In no event shall N.J.A.C. 12:56-6.4 and 6.5 be interpreted to deny to an employee the right to make claim for additional cash compensation where it is shown to the satisfaction of the Commissioner that the actual amount of tips received was less than the amount determined by the employer.

12:56-8.6 Fair value computed

- (a) Except whenever any determination made by regulation is applicable, the fair value to the employer of furnishing the employee with food and lodging is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance for interest on the depreciated amount of capital invested by the employer.
- (b) The fair value so computed shall not exceed the rental value of comparable facilities in the State.
- (c) The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be arrived at in accordance with generally accepted accounting practices.
- (d) Generally accepted accounting practices shall not include those rejected by the New Jersey Division of Taxation or the Federal Internal Revenue Service for tax purposes, and the term "depreciation" includes obsolescence.
- (e) Items found to be primarily for the benefit of the employer shall not be included in the cost.
- (f) Lodging furnished which is in violation of any Federal, State, or local law, ordinance or prohibition shall be valued at nothing.
- (g) When a fair market value does not exist for rental of the lodging in the competitive open market, the fair market value shall be zero.

12:56-8.7 Inspection of fair value methods

Methods of determining fair value shall be subject to inspection and approval by the Commissioner.

12:56-8.8 Method of determining "fair value"

The following is an example of a method of determining fair value:

Employer "A" has three employees who are furnished food and lodging in addition to gross cash wages of \$2.50 per hour. The cost of food purchased for the employees is \$72.00 total a week. The building housing the employees cost \$36,000 in 1978 and subsequent improvements amounted to \$4,000. Maintenance costs for the year were \$2,480. The estimated life of the building when constructed was 50 years. The building can adequately house six persons.

The "fair value" of food for the week is determined as follows:	
Total cost	\$72.00
"Fair value" per employee (\$72.00 divided by 3)	\$24.00
The "fair value" of lodging for year 1979 is determined as follows:	
Cost of building in 1978	\$36,000.00
Add: Subsequent improvements	\$4,000.00
Total cost	\$40,000.00
Depreciation for year (1/50 times \$40,000.00)	\$800.00
Maintenance costs for year	\$2,480.00
Interest on employer's net investment:	
Total investment	\$40,000.00
Depreciation to date	\$800.00
Net investment	\$39,200.00
Six percent of net investment	\$2,352.00
Total for year	\$5,632.00
Total for week (\$5,632.00 divided by 52)	\$108.31
"Fair value" per employee (\$108.31 divided by 6 persons)	\$18.05
Assume that employee B worked 40 hours in a particular week. His wages would be as follows:	
Gross cash wages (40 times \$2.50)	\$100.00
Fair value of food	\$24.00
Fair value of lodging	\$18.00
Gross weekly wage	\$142.05
Hour wage (\$142.05 divided by 40)	\$3.55
Assume that employee B worked 48 hours in a particular week. His wage entitlement would be as follows:	
Total earnings exclusive of overtime premium pay:	
Gross cash wages (48 hrs. times \$2.50)	\$120.00
Fair value of food	\$24.00
Fair value of lodging	\$18.05
Total straight time wages	\$162.05
Overtime wages:	
Regular hourly wage (162.05 divided by 48 hours overtime pay 8 x \$3.38 divided by 2)	\$13.52
Employee B Wage entitlement for 48 hours	\$175.57

12:56-8.9 (Reserved)

SUBCHAPTER 9. EMPLOYMENT OF INDIVIDUALS WITH DISABILITIES

12:56-9.1 Definitions

- (a) "Individual with disability" means an individual whose earning capacity is impaired by a physical or mental disability and who is being served or eligible to be served in accordance with the recognized rehabilitation program of a sheltered workshop, education institution, or other program of rehabilitation approved by the commissioner.
- (b) "Sheltered workshop" means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency or injury, and to provide such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

12:56-9.2 Application for permit

- (a) Application for a special permit shall be filed on properly executed prescribed forms with the Office of Wage and Hour Compliance. Special permit means authorization to employ individuals with disabilities at wages less than minimum wage rates for such period of time fixed and stated in the authorization.
- (b) A blanket special permit may be issued for an entire sheltered workshop or a department of a sheltered workshop.

12:56-9.3 Criteria for permit

- (a) The following criteria may be considered in determining the necessity of issuing a special permit:
 - 1. The present and previous earnings of disabled employees;
 - 2. The nature and extent of the disability;
 - 3. The wages of employees who are not disabled engaged in comparable work;
 - 4. The types and duration of rehabilitative services;
 - 5. The extent to which individuals with disabilities share, through wages, in the receipts for work done;
 - 6. The extent to which the disabled employees are learners;
 - 7. Whether there exists any employer arrangement with customers or subcontractors which appears to be an unfair method of competition which tends to spread or perpetuate substandard wage levels; and
 - 8. The productivity of the disabled employee.

12:56-9.4 Compliance

- (a) All terms and conditions shall be complied with under which a special permit is granted.
- (b) No individual who is not an individual with a disability shall be employed under a special permit at wages lower than the minimum required by the act.

12:56-9.5 Cancellation of permit

- (a) The Commissioner may cancel any special permit for cause.
- (b) A special permit may be canceled as of the date of issuance upon the following conditions:
 - 1. If it is found that fraud has been exercised in obtaining the special permit or in permitting an individual with a disability to work thereunder; or
 - 2. As of the date of the violation, if it is found that any of the provisions of the act, or of the terms of the special permit have been violated; or
 - 3. As of the date of notice of cancellation, if in the judgment of the Commissioner, the special permit is no longer necessary in the interest of the employees covered.

SUBCHAPTER 10. (RESERVED)

SUBCHAPTER 11. EMPLOYMENT IN THE FIRST PROCESSING OF FARM PRODUCTS OCCUPATIONS

12:56-11.1 Definitions

- (a) "First processing of farm products occupations" means any activity as an employee in an establishment which is in an industry engaged primarily in the first processing of farm products during seasonal operations.
- (b) "Industry engaged primarily in the first processing of farm products" means an establishment which is primarily engaged in the first processing of, or in canning or packing, perishable or seasonal fresh fruits or vegetables for human consumption, during seasonal operations.

12:56-11.2 Minimum wage

All employees including those under the age of 18 engaged in first processing of farm products occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

12:56-11.3 Overtime rates

Overtime at 1½ times the regular hourly rate shall be paid to those engaged in first processing of farm products occupations for all hours worked in excess of 40 in a week.

SUBCHAPTER 12. EMPLOYMENT IN SEASONAL AMUSEMENT OCCUPATIONS

12:56-12.1 Definitions

(a) "Seasonal amusement occupation":

1. Means any activity as an employee in an establishment which is exclusively an amusement or recreational establishment, provided:
 - i. It does not operate for more than seven months in any calendar year; or
 - ii. During the preceding calendar year, its average receipts for any consecutive six months of such year were not more than 33 1/3 percent of its average receipts for the other six months of that year.
2. "Seasonal amusement occupation" includes but is not limited to amusement rides and amusement device operators, cashiers who sell tickets for the rides and device, and operators of game concessions.
3. "Seasonal amusement occupation" does not include retail, eating or drinking concessions; nor does it pertain to camps, beach and swimming facilities, movie theatres, theatrical productions, athletic events, professional entertainment, pool and billiard parlors, circuses and outdoor shows, sport activities or centers, country club athletic facilities, bowling alleys, race tracks and like facilities which are not part of a diversified amusement enterprise.

12:56-12.2 Minimum wage

Employees engaged in seasonal amusement occupations shall be paid at minimum wage rates as provided in N.J.A.C. 12:56-3.1.

12:56-12.3 Overtime rates

Employees engaged in seasonal amusement occupations shall be exempt from the overtime provisions of the act.

SUBCHAPTER 13. EMPLOYMENT IN HOTEL AND MOTEL OCCUPATIONS

12:56-13.1 Definitions

- (a) "Hotel and motel occupation" means any activity as an employee for an establishment kept, used, maintained, advertised as or held out to be a place where sleeping accommodations are supplied for pay to transient or permanent guests, in which 15 or more rooms are available for rental furnished or unfurnished; except this definition shall not include summer camps and country clubs when these activities are not part of a hotel or motel establishment.
- (b) "Seasonal hotel and motel" means a hotel or motel in which, during the previous business year, not less than two-thirds of the gross receipts were received in a continuous period of three months or less.

12:56-13.2 Minimum wage

Employees including those under 18 years of age engaged in hotel and motel occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-13.3 Overtime rates

Overtime at 1½ times the regular hourly wage rate shall be paid for all hours worked in excess of 40 hours in any week.

12:56-13.4 Cash wage standard

- (a) The wage rates established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.
- (b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$2.13 and must demonstrate that the balance of the \$5.05^[1] minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the \$5.05^[1] minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

- ^[1] Effective January 21, 1999, the minimum wage rate is \$5.15 per hour.
Effective October 1, 2005, the minimum wage rate is \$6.15 per hour.
Effective October 1, 2006, the minimum wage rate is \$7.15 per hour.

12:56-13.5 Substantiation of gratuities; food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

12:56-13.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

12:56-13.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and employee, gratuities, food and lodging shall not be included as part of such cash wages.

12:56-13.8 Required food and lodging acceptance; costs

Meals and lodging which the employer requires the employee to accept shall be considered for the convenience of the employer and the cost thereof shall not be considered applicable as minimum wages.

SUBCHAPTER 14. EMPLOYMENT IN FOOD SERVICE OCCUPATIONS

12:56-14.1 Definitions

- (a) "Restaurant industry" means any eating or drinking place which prepares and offers food or beverages for human consumption either in any of its premises or by such services as catering, banquets, box lunch or curbside service.
- (b) "Restaurant occupation" means any activity of any employee in the restaurant industry.
- (c) "Uniform" means any garment such as dress, apron, collar, cuffs or headaddress which is worn by the employee either at the direction of the employer or as a condition of employment.

12:56-14.2 Minimum wage

Employees including those under 18 years of age employed at restaurant occupations shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-14.3 Overtime rates

- (a) Overtime at 1½ the regular hourly wage shall be paid for all hours worked in excess of 40 hours in any week.
 - 1. The minimum overtime rate for those covered by the overtime provision is \$5.70 on May 3, 1990, \$6.38 on April 1, 1991, and \$7.58^[1] on April 1, 1992.
 - 2. If the employee's regular hourly wage rate is more than the minimum per hour, then the overtime rate is 1½ times the employee's regular rate.
 - 3. Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week. Gratuities shall not be counted toward the premium part of the overtime. The additional halftime must be in cash.

- ^[1] Effective January 21, 1999, the minimum overtime wage rate is \$7.73 per hour.
Effective October 1, 2005, the minimum overtime wage rate is \$9.23 per hour.
Effective October 1, 2006, the minimum overtime wage rate is \$10.73 per hour.

12:56-14.4 Cash wage standard

- (a) The wage rate established in this subchapter shall be acceptable in those occupations where gratuities or food and/or lodging are actually received.

- (b) Employers subject to the Fair Labor Standards Act must pay the Federal cash wage rate of \$2.13 and must demonstrate that the balance of the \$5.05^[1] minimum wage required under State law is paid through gratuities in accordance with N.J.A.C. 12:56-4 and 12:56-8. Employers not subject to the Fair Labor Standards Act must demonstrate that the total wage, including cash and gratuities, equals the \$5.05^[1] minimum wage required under State law in accordance with N.J.A.C. 12:56-4 and 12:56-8.

- [1] Effective January 21, 1999, the minimum wage rate is \$5.15 per hour.
Effective October 1, 2005, the minimum wage rate is \$6.15 per hour.
Effective October 1, 2006, the minimum wage rate is \$7.15 per hour.

12:56-14.5 Substantiation of gratuities, food and lodging cost

Employer substantiation of gratuities received by an employee and the cost of food and lodging shall be as provided in this chapter.

12:56-14.6 Food and lodging as wages over 40 hours

Food and lodging supplied to employees shall not be included in wages for those hours worked in excess of 40 hours per week.

12:56-14.7 Cash wage condition of employment

Where cash wages have been established as a condition of employment through agreement between the employer and the employee or the employee's collective bargaining agent, gratuities, food and lodging shall not be included as part of such cash wages.

12:56-14.8 Meals and lodging applicable to minimum wage

Meals and lodging shall be considered applicable toward the minimum wage unless the employee elects not to receive such meals and lodging.

SUBCHAPTER 15. EMPLOYMENT IN AIR CARRIER INDUSTRY

12:56-15.1 Definitions

- (a) "Air carrier employee" means an employee, non-union or union, where applicable labor agreements permit, who operates in a phase of air carrier employment which operates on a seven day a week, 24 hour-a-day basis and whose normal work is scheduled on a seven day a week, 24 hour-a-day basis.
- (b) "Air carrier employer" means an air carrier holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board pursuant to Section 401 of the Federal Aviation Act of 1958, 49 USC Section 1371.

12:56-15.2 Minimum wage

Employees engaged in the air carrier industry shall be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-15.3 Overtime rates

- (a) Overtime shall be paid at 1½ times the regular hourly wage rate to all nonexempt employees for all hours worked in excess of 40 hours in a week except rescheduled time off for overtime shall be permitted to air carrier employees where:
1. The employee so requests;
 2. The employer determines that the workload demands permit the employee's absence; or
 3. The rescheduled time off is taken within specified periods.

SUBCHAPTER 16. INDEPENDENT CONTRACTOR STATUS

12:56-16.1 Independent contractor status criteria

The criteria identified in the Unemployment Compensation Law at N.J.S.A. 43:21-19(i)(6)(A)(B)(C) and interpreting case law will be used to determine whether an individual is an employee or independent contractor for purposes of the Wage and Hour Law.

SUBCHAPTER 17. UNIFORMS

12:56-17.1 Uniforms

- (a) It shall be a presumption that the employer has required his or her employees to wear uniforms if such garments are of a similar design, color or material, or form part of the decorative pattern of the establishment.
- (b) Maintenance and upkeep of uniforms of kitchen people, cooks, and dishwashers shall be provided and maintained by the employer.
- (c) If uniforms are required which are not appropriate for street wear or use in other establishments, the employer shall pay for the cost of such uniforms.
- (d) If a particular type of clothing is required to be worn, which is appropriate for street wear, the employer who requires an employee to furnish more than one style, type or color of clothing during any one year of his or her employment shall pay to each such employee, in addition to his or her regular wages otherwise due, the amount which employee is required to pay for newly required uniform or uniforms and such additional payment shall be made to the employee in the week in which the change is required.
- (e) No deduction from the pay of employees for uniforms shall be permitted. If the employee pays for uniforms in cash and the cash payment brings the employee below the minimum wage, the employer shall make up the difference for the minimum wage for that week.

SUBCHAPTER 18. SCHOOL-TO-WORK PROGRAM

12:56-18.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Career awareness and exploration” means structured school programs that enable student learners to:

1. Develop awareness of the many employment opportunities available;
2. Develop awareness of the relevant factors to be considered in making career decisions;
3. Become familiar with occupational clusters and classifications;
4. Explore key occupational areas and assess their own interests and abilities; and
5. Develop tentative occupational plans and arrive at a tentative career choice.

“Incidental” means any irrelevant, occasional productive work which is not part of achieving learning objectives.

“Internship” means a program of study for a student which includes supervised practical training.

“Job shadowing” means the process by which a student learner determines (by observation, interview and study) the pertinent information related to an occupation. Information can include such factors as: qualifications for employment, functions performed, necessary skills and knowledge, equipment and material used, and physical demands and working environment.

12:56-18.2 School-to-work program requirements

The following conditions shall be met to allow for non-paid activities of student learners at for profit and not-for-profit organizations:

- The student shall be at least 16 years of age;
- The activity must be related to a formal school-to-work transition plan for a student learner;
- There is collaboration and planning between worksite staff and school staff resulting in clearly identified learning objectives related to the non-paid activities;
- Any productive work is incidental to achieving learning objectives;

The student learner receives credit for time spent at the worksite and the student is expected to achieve the learning objectives;
The student learner is supervised by a school official and a workplace mentor;
The non-paid activity is of a limited duration, related to an educational purpose and there is no guarantee or expectation that the activity will result in employment; and
The student learner does not replace an employee.

SUBCHAPTER 19. EMPLOYMENT IN THE TRUCKING INDUSTRY

12:56-19.1 Trucking industry employer defined

“Trucking industry employer” means any business or establishment primarily operating for the purpose of conveying property from one place to another by road or highway, and includes the storage and warehousing of goods and property. Such an employer must also be subject to the jurisdiction of the Secretary of Transportation pursuant to the Federal Motor Carrier Act, 49 U.S.C. 31501 et seq., whose employees are exempt under Section 13(b)(1) of the Fair Labor Standards Act, 29 U.S.C. 213(b)(1), which provides an exemption to employees regulated by Section 204 of the Federal Motor Carrier Act and Interstate Commerce Act.

12:56-19.2 Minimum wage

Employees engaged in the trucking industry shall be paid a minimum wage rate as provided in N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-3.1.

12:56-19.3 Overtime rates

Every trucking industry employer shall pay to all drivers, helpers, loaders and mechanics for whom the Secretary of Transportation may prescribe maximum hours of work for the safe operation of vehicles pursuant to 49 U.S.C. § 31502(b) an overtime rate not less than one and one-half times the minimum wage required pursuant to N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-3.1.

SUBCHAPTER 20. EMPLOYMENT OF SKILLED MECHANICS

12:56-20.1 Skilled mechanic defined

(a) For purposes of this exemption, “skilled mechanic” is defined as:

1. A mechanic who is a specialist performing all repairs and who works on the total automobile and who works on various automobile makes and models; or
2. A mechanic who is responsible for work on certain parts of the vehicle, for example, transmission mechanic, brake mechanic, engine mechanic, air-conditioning mechanic.

(b) The term “skilled mechanic” does not include: a mechanic or helper who works on limited sections of an automobile and performs minor tasks such as lubricating, tire changing, brake service, oil changing.

12:56-20.2 Minimum wage

Skilled mechanics engaged in the new or the new and used motor vehicle sales or the automotive and/or truck repair industry must be paid a minimum wage rate as provided in N.J.A.C. 12:56-3.1.

12:56-20.3 Overtime rates

(a) Skilled mechanics employed by nonmanufacturing employers primarily engaged in the business of selling new or new and used motor vehicles or in the business of automotive and/or truck repair shall be exempt from the overtime requirements of N.J.S.A. 34:11-56a4 and N.J.A.C. 12:56-6.1 provided all of the following conditions are met:

1. The mechanic shall be paid on a flat rate or incentive rate basis; and
2. The mechanic shall be guaranteed a basic contractual hourly rate, separate from and exclusive from the flat or incentive rate. The contractual hourly rate must include payment of time and one-half of the hourly rate for all hours actually worked in excess of 40 hours per week. The contractual hourly rate must be at least minimum wage.

APPENDIX A. AVAILABILITY OF STANDARDS REFERRED TO IN THIS CHAPTER

A copy of each of the standards referenced in this chapter is on file and may be inspected at the following office between the hours of 9:00 a.m. and 4:00 p.m. on normal working days:

New Jersey Department of Labor and Workforce Development
Labor Standards and Safety Enforcement
John Fitch Plaza
Trenton, New Jersey

Copies of the referenced standards may be obtained from the following office:

New Jersey Department of Labor and Workforce Development
Division of Wage and Hour Compliance
PO Box 389
Trenton, New Jersey 08625-0389